

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 5, 2006

To: The Commission
(Meeting of April 13, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1669 (Kehoe) - Public utilities: load-serving entities:
information.
As Amended March 30, 2006**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill would require the Commission to require all load-serving entities (“LSEs”) to provide public disclosure comparable to that required of an electrical corporation submitting equivalent information in any filing necessary to demonstrate compliance with any procurement activities (including resource adequacy requirements and renewables portfolio standard requirements).

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

As a result of SB 1488 (Ch. 690, Stats. 2004), the Commission was required to initiate proceedings to examine its practices with respect to confidentiality requirements and the California Public Records Act to ensure that these practices “provide for meaningful public participation and open decision-making.” The Commission responded by initiating Order Instituting Rulemaking (R.) 05-06-040, referred to as the “confidentiality proceeding”. This proceeding is being conducted in two phases. The first phase (underway now) will examine our confidentiality practices in the context of electricity procurement. It is anticipated that the Load Serving Entities (“LSEs”) (along with others) will be filing their long-term procurement plans with the CPUC in the procurement proceeding (R.04-04-003) during the summer. It would be logical to hope that a decision in the first phase of this confidentiality proceeding will be out in time to give guidance to the LSEs on confidentiality issues when they file their long-term procurement plans.

Two other proceedings are also related to this topic. In R.04-04-003 the Commission issued D.05-10-042 on October 31, 2005, and provided for taking a “conservative approach” to resource adequacy requirement (“RAR”)-related confidentiality issues while R.05-06-040 (the generic confidentiality proceeding discussed above) is pending. “Conservative approach” means that the assigned ALJ kept the data of concern confidential while deferring a substantive decision on the confidentiality treatment for load serving entity data to the generic rulemaking.

Finally, in R.05-12-013, the Commission’s rulemaking proceeding on resource adequacy requirements or RAR, effect is being given to the “conservative approach” provided for in D.05-10-042 (discussed above). In this proceeding, The Utility Reform Network (“TURN”) objected to limiting Non-Market Participant Party (“NMPP”) access to Electric Service Provider (“ESP”) RAR compliance filings. The ALJ in this proceeding issued a ruling February 10th which (among other things) denied TURN’s proposed broadening of access to ESP compliance filing data in order to give effect to the CPUC’s intent to pursue this interim conservative approach.

As a result, the direction provided by this legislation, even if it becomes law, is already being accomplished and will likely be in effect prior to the date by which this legislation might be effective. This measure is effectively redundant to existing law.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

No amendment is suggested since the legislation is unnecessary.

DIVISION ANALYSIS (ALJ Division):

This measure would likely have no impact on existing policy or practice since the directive it seeks to impose is already being undertaken in response to prior legislation. As noted above, it is being actively address in multiple proceedings.

PROGRAM BACKGROUND:

SB 1488 as enacted directed the Commission to initiate a proceeding to examine its practices under sections 454.5 (related to procurement planning) and 583 (related to confidentiality of utility information submitted to the Commission) to ensure that Commission practices provide for “meaningful public participation and open decision-making.” The concerns expressed that were the genesis of that legislation went to whether confidentiality was being imposed to too great an extent in procurement related proceedings.

In R. 05-06-040 (the confidentiality proceeding) and R.04-04-003, noted above, the Commission is addressing the array of issues related to appropriate treatment of

information that should be considered confidential and the guidelines for access to such information by Commission staff, including the Division of Ratepayer Advocates, and other non-market participants.

LEGISLATIVE HISTORY:

SB 1488, as noted, directed the Commission to undertake a procedural review that encompasses what would be required by this bill.

FISCAL IMPACT:

None. To the extent that this bill would have fiscal impacts on the Commission, they would be minor and absorbable.

STATUS:

The bill was heard in the Senate EU&C Committee on April 4th, passed, and was re-referred to the Senate Judiciary Committee.

SUPPORT/OPPOSITION:Support:

The Utility Reform Network
Southern California Edison

Oppose:

Alliance for Retail Energy Markets
Constellation Energy

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BILL LANGUAGE:

BILL NUMBER: SB 1669 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 30, 2006

INTRODUCED BY Senator Kehoe

FEBRUARY 24, 2006

An act to add Section 380.5 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1669, as amended, Kehoe ~~—Electrical restructuring— resource adequacy: market sensitive information.~~
Public utilities: load-serving entities: information.

(1) The California Constitution establishes the Public Utilities Commission, and provides it with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities.

The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt ~~a procurement plan and~~ a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program.

Existing law requires the commission, in consultation with the Independent System Operator (ISO), to establish resource adequacy requirements for all load-serving entities, as defined, in accordance with specified objectives. Existing law requires the commission to implement and enforce the resource adequacy requirements in a nondiscriminatory manner. Existing law subjects each load-serving entity to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations by law or by order or decision of the commission.

This bill would ~~require the commission to develop and adopt procedures it determines to be appropriate to ensure the confidentiality of any market sensitive information submitted to the commission by load serving entities other than electrical corporations that is contained in any filing necessary~~ require the commission to require all load-serving entities to provide public disclosure comparable to that required of an electrical corporation submitting equivalent information in any filing necessary to demonstrate compliance with ~~those~~ any procurement activities regulated by the commission, including the resource adequacy requirements and renewables

portfolio standard requirements. ~~The bill would require the commission, in determining whether information is market sensitive, to require load serving entities to provide public disclosure comparable to that required of an electrical corporation submitting equivalent information.~~ The bill would require the commission to ensure that the Division of Ratepayer Advocates and other entities representing consumer interests that are nonmarket participants are provided access to ~~market sensitive information under those confidentiality procedures~~ any information the commission determines is required to be withheld from the public .

(2) Under existing law, a violation of an order or direction of the commission is a crime.

The provisions of this bill would require an order or other action of the commission to implement its provisions. Because a violation of such an order or decision of the commission would be a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 380.5 is added to the Public Utilities Code, to read:

380.5. The commission shall ~~develop and adopt procedures it determines to be appropriate to ensure the confidentiality of any market sensitive information submitted to the commission by load serving entities other than electrical corporations that is contained in any filing necessary to demonstrate compliance with the resource adequacy requirements of Section 380 and the renewables portfolio standard requirements of Article 16 (commencing with Section 399.11).~~ In determining whether information is market sensitive, the commission shall ~~require~~ require all load-serving entities to provide public disclosure comparable to that required of an electrical corporation submitting equivalent information *in any filing necessary to demonstrate compliance with any procurement activities regulated by the commission, including the resource adequacy requirements of Section 380 and the renewables portfolio standard requirements of Article 16 (commencing with Section 399.11)* . The commission shall ensure that the Division of Ratepayer Advocates and other entities representing consumer interests that are nonmarket participants are provided access to ~~market sensitive information under those confidentiality procedures.~~ any information the commission determines must be withheld from the public.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.